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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. **77-1568**

MISSOURI CHURCH OF SCIENTOLOGY,
Appellant,

v.

STATE TAX COMMISSION OF MISSOURI, J. E. RINEY, DON G. WILLIAMS,
ROBERT F. LOVE, Commissioners of the State Tax Commission of Mis-
souri, JOHN K. TRAVERS, Collector of Revenue, City of St. Louis, and
GLENN J. McBRADY, Assessor, City of St. Louis,
Appellees.

On Appeal from the Supreme Court of Missouri

JURISDICTIONAL STATEMENT

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Appellees.

On Appeal from the Supreme Court of Missouri

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of Missouri entered on December 19, 1977, denying appellant exemption from ad valorem taxation under Missouri law. The Court held that the Missouri Constitution and Missouri statutes require that religious worship include a belief in "the Supreme Being" before a religion can obtain tax exempt status and that

such a requirement does not violate the religious freedom provisions of the First and Fourteenth Amendments of the Constitution of the United States. Appellant respectfully submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial federal question is presented.

OPINIONS BELOW

The opinion of the Supreme Court of Missouri is reported at 560 S.W.2d 837 and is attached hereto as Appendix A. The opinion of the Circuit Court of the City of St. Louis and the State Tax Commission of Missouri are unreported and are attached hereto as Appendices B and C respectively.

JURISDICTION

On November 1, 1974, the State Tax Commission of Missouri denied Appellant Church's exemption from ad valorem taxation under Article X, Section 6, of the Missouri Constitution and Section 137.100 of the Missouri Revised Statutes, and affirmed placement of the Church's personal property on the 1974 tax rolls of the City of St. Louis. Appellant filed a petition for review of this decision in the Circuit Court of the City of St. Louis, State of Missouri, on November 26, 1974. The judgment of the Circuit Court, affirming denial of tax-exempt status, was entered on March 8, 1976. The judgment of the Supreme Court of Missouri affirming the Circuit Court was entered on December 19, 1977. A timely petition for rehearing was filed on January 3, 1978, and was denied by the Supreme Court of Missouri on February 8, 1978 (Appendix D hereto). The Notice of Appeal to this Court was filed on April 14, 1978 (Appendix E hereto).

The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by Title 28, United States Code, Section 1257(2), because the Supreme Court of Missouri in its opinion held that the Missouri Constitution, Article X, Section 6, and the Missouri statutes, especially § 137.100(5), require that religious worship include a belief in the Supreme Being before a religion can obtain tax exempt status and specifically rejected Appellant's contention that such a requirement is repugnant to the First and Fourteenth Amendments to the Constitution of the United States. Since a final decision of a state court has sustained the validity of a state constitutional provision and a state statute challenged on federal constitutional grounds, an appeal to the United States Supreme Court lies as a matter of right. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 605 (1975).

The Missouri Constitution, Article X, § 6, provides in pertinent part: "[A]ll property, real and personal, not held for private or corporate profit and used exclusively for religious worship . . . may be exempted from taxation by general law." Section 137.100(5), Revised Statutes of Missouri, 1969, exempts from state, county and local taxation "All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit." The constitutional provision and state statute are set out in full in Appendix F hereto.

QUESTION PRESENTED

Does Missouri law that Church property used for religious worship is entitled to tax exempt status only if such religious worship includes a belief in "the Supreme Being" constitute the establishment of religion or the prohibition of the free exercise of religion in violation of the First and Fourteenth Amendments to the Constitution of the United States?

STATEMENT

Plaintiff-Appellant Missouri Church of Scientology (hereinafter referred to as the "Church") is a general, not-for-profit religious corporation organized under the laws of Missouri with its registered agent and principal office located in the City of St. Louis, State of Missouri.

By letter dated January 3, 1974, the Assessor of St. Louis, Missouri, defendant-appellee Glenn J. McBrady, advised the Church that its tangible personal property located within the City would be placed on the City's tax rolls as of January 1, 1974. Pursuant to that letter, Assessor Brady did place the property on the tax rolls and assessed its value at \$5,000, and defendant-appellee, John K. Travers, St. Louis Collector of Revenue, pursuant to said assessment, billed the Church \$281.50 for taxes due on said \$5,000 assessment. The Church appealed the Assessor's action to the Board of Equalization for the City of St. Louis which advised the Church by letter dated June 5, 1974, that it had affirmed the decision of the Assessor.

The Church then appealed that decision to the defendant-appellee State Tax Commission of Missouri claiming that its property was exempt from taxation because it was actually and regularly used exclusively for religious worship. This appeal was heard on October 8, 1974, before defendant-appellee members of the State Tax Commission, Messrs. Riney, Williams and Love. By letter dated November 1, 1974, the State Tax Commission ruled without opinion that the Church's personal property was worth \$5,000 and was taxable.

On November 26, 1974, the Church, alleging the foregoing facts and that it was entitled to tax exempt status, filed a petition in the Circuit Court of the City of St. Louis to review the order of the State Tax Commission. Approximately a year later, on or about November 6, 1975, the State Tax Commission rendered

a written decision giving its reasons for its decision of November 1, 1974. The Commission held that the Church is not a religion because it is not "devoted to the worship of the Supreme Being" and that such a devotion is a necessary requirement to obtain religious tax exempt status under Missouri law (pages A-32 and A-33 *infra*).

On March 8, 1976, the Circuit Court of St. Louis rendered its opinion. It pointed out that Reverend Frederick M. Rock of the Church testified that the Church believes in God; that the Church believes that man is a spiritual being; that the Church has a creed used all across the world; that the Church holds services every Sunday with a sermon delivered and prayers said; that Reverend Rock conducts marriage ceremonies and christenings and is authorized by the Church to conduct funerals; that the Church distributes religious literature concerning the spiritual nature of man; that the Church helps with the aged, the retarded, alcoholics and criminal rehabilitation; and that the Church had 6,000 members in its local organization. The Court held that the Commission erred in holding that "devotion to the worship of 'the Supreme Being' is an essential test" to be entitled to tax exempt status, but held against the Church on the ground that it had not established that the personal property in question was being used "exclusively" for religious purposes as required by the statute (pages A-27 and A-28 *infra*).

On appeal, the Supreme Court of Missouri, on December 19, 1977, ruled against the Church. It held that under Missouri law church property used for religious worship is entitled to tax exempt status only if such worship includes a belief in the Supreme Being (page A-9 *infra*):

[W]e conclude that the constitutional and statutory term religious worship of Art. X, § 6 and § 137.100 embody as a minimum requirement a belief in the Supreme Being.

The Court specifically and directly rejected (in footnote 5 of the opinion, pages A-9 and A-10 *infra*) the Church's conten-

tion that such an interpretation of the Missouri statute violated the First Amendment of the United States Constitution as made applicable to the States by the Fourteenth Amendment and was contrary to this Court's decisions in *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1 (1947), *Torcaso v. Watkins*, 367 U.S. 488 (1961), and *United States v. Seeger*, 380 U.S. 163 (1965). The Court said that *Torcaso* held "only that a state may not require an oath declaring a belief in God as a prerequisite for holding public office but indicated nothing that would limit a legislative grant of tax exempt status to religious organizations" (at footnote 5, pages A-9 and A-10 *infra*).

The Court held that the order of the Tax Commission rested on "the failure [of the Church] to show the character of the use as 'for religious worship'" (page A-5 *infra*), and it went on to affirm the Commission's finding that while the Church had "some of the trappings and accouterments of an organized religion," it was really "more an applied philosophy which has a certain religious connotation, but which falls short of being devoted to the worship of the Supreme Being." The Court upheld the Commission's rejection of the testimony of Reverend Rock that the Church believes in God as not being credible and concluded that the Church had not satisfied its burden of "proof beyond a reasonable doubt" (page A-12 *infra*) that it was devoted to the worship of a Supreme Being as required by Missouri law.

Judge Seiler concurred in result (pages A-16 and A-17 *infra*). He stated that he did "not believe we should restrict the definition [of religious worship] to conventional orthodox religions, which it seems to me is what the principal opinion does. History shows that what is orthodoxy today was once heresy." Judge Seiler therefore concurred on the ground that the Church had not carried its burden of proof on the issues generally rather than on the specific issue of whether it believed in the Supreme Being.

The Church's timely petition for rehearing argued, *inter alia*, that the Court's interpretation of the Missouri Constitution and statute established a religion and prohibited the free exercise thereof in violation of the First and Fourteenth Amendments. The petition was denied without opinion on February 8, 1978.

THE QUESTION IS SUBSTANTIAL

1. In *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961), this Court, speaking through Mr. Justice Black, held:

We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion." Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and *neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.* (Emphasis supplied.)

This language was quoted with approval by the Court in *School District of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 220 (1963).

The Court in *Schempp* also cited with approval, at page 217, *Cantwell v. Connecticut*, 310 U.S. 296, 303-304 (1940), which held that the First Amendment "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship" (Emphasis supplied). See also *Everson v. Board of Education*, 330 U.S. 1, 15 (1947); *McGowan v. Maryland*, 366 U.S. 420, 441-442 (1961); and *cf.*, *United States v. Ballard*, 322 U.S. 78, 86 (1944), *United States v. Seeger*, 380 U.S. 163, 181-184 (1965), and *Welsh v. United States*, 398 U.S. 333 (1970).

The Supreme Court of Missouri has violated the teachings of these cases, especially *Torcaso, supra*, by expressly aiding "those religions based on a belief in the existence of God as against those religions founded on different beliefs." *Torcaso, supra*, at page 495. The state court has held that a religion must worship "the Supreme Being" in order to obtain tax-exempt status and has rejected the Church's claim on the sole basis that it failed to establish such worship beyond a reasonable doubt. Such a ruling violates the First Amendment because it not only establishes religions which believe in the worship of God, but it also prohibits the free exercise of those which do not. See Note, *Toward a Constitutional Definition of Religion*, 91 Harv. Law Rev. 1056, 1072 (1978).

As Justice Brennan's concurring opinion in *Schempp, supra*, at page 240, points out:

Today the Nation is far more heterogeneous religiously, including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all. (Emphasis supplied.)

Regardless of whether the Church worships God, it is still a religion and by denying tax exempt status to the Church and the many religions in this heterogeneous Nation that do not worship God, the Supreme Court of Missouri has placed a chillingly narrow interpretation on the First Amendment rather than the "broad interpretation" to which it is entitled (Chief Justice Warren speaking for the Court in *McGowan v. Maryland*, 366 U.S. 420, 441-442 (1961)).

2. The Church does not challenge the propriety of tax deductions or exemptions which incidentally benefit churches and religious institutions as well as educational, charitable and eleemosynary groups. The vice of the opinion below is that it fosters the use of tax benefits to subsidize worship of, and a

belief in, "the Supreme Being." If the decisions of this Court mean anything, they mean that tax exemption must be non-discriminatory and available on equal terms to religions which reject a belief in a Supreme Being (much less "the Supreme Being"), as well as those which accept such a belief. This point was specifically made by Mr. Justice Brennan in *Schempp, supra*, at pp. 301-302 (concurring opinion):

Nothing we hold today questions the propriety of certain tax deductions or exemptions which incidentally benefit churches and religious institutions, along with many secular charities and nonprofit organizations. If religious institutions benefit, it is in spite of rather than because of their religious character. For religious institutions simply share benefits which government makes generally available to educational, charitable, and eleemosynary groups. There is no indication that taxing authorities have used such benefits in any way, to subsidize worship or foster a belief in God. And as among religious beneficiaries, the tax exemption or deduction can be truly nondiscriminatory, available on equal terms to small as well as large religious bodies, to popular and unpopular sects, and to those organizations which reject as well as those which accept a belief in God. (Emphasis supplied.)

See also *Walz v. Tax Commission of the City of New York*, 397 U.S. 664 (1970).

In making this observation, Justice Brennan cited with approval two cases on point, one of which the court below expressly refused to follow. *Washington Ethical Society v. District of Columbia*, 101 U.S. App. D.C. 371, 249 F.2d 127 (1957); and *Fellowship of Humanity v. County of Alameda*, 153 Cal. App. 2d 673, 315 P.2d 394 (1957). In both of those cases, the courts specifically chose to avoid the serious constitutional question presented here by holding that belief in God is not es-

sential under the applicable statutes giving tax exempt status to property used for religious worship. The court below expressly chose not to follow *Fellowship of Humanity, supra*, but instead faced the constitutional question, and, it is respectfully suggested, resolved that question in a manner inconsistent with the First Amendment and the cases in this Court construing it.

3. The Church's claim is substantial and there is no doubt it is properly before this Court for review. "There can be no question as to the proper presentation of a federal claim where the highest state court passes on it." *Raley v. Ohio*, 360 U.S. 423, 436 (1959). See also *Whitney v. California*, 274 U.S. 357, 360-361 (1927); *Manhattan Life Ins. Co. v. Cohen*, 234 U.S. 123, 134 (1914); *Coleman v. Alabama*, 377 U.S. 129, 133 (1964); *Why, Inc. v. Borough of Glassboro*, 393 U.S. 117, 119 (1968). The constitutional question was argued in the circuit court as soon as the State Tax Commission rendered its opinion and was resolved by the circuit court in the Church's favor. It was also argued in the Supreme Court of Missouri and resolved adversely to the Church. The Church's petition for rehearing raised the matter again but to no avail.

Moreover, as Judge Seiler pointed out in his concurring opinion, the decision below based its rejection of the Church's exemption solely on the alleged failure of the Church to prove "beyond a reasonable doubt" that it met the Court's erroneous constitutional interpretation of the phrase "religious worship." As Judge Seiler also implied, the court's definition of religious worship is improper and unconstitutional because such a definition would include only "conventional orthodox religions." It is this narrow definition which cannot pass constitutional muster and should not be allowed to stand. *Fowler v. State of Rhode Island*, 345 U.S. 67 (1953).

It is respectfully submitted that the constitutional question is properly presented is substantial and was erroneously decided

by the Supreme Court of Missouri, and that therefore this Honorable Court should note probable jurisdiction.

Respectfully submitted,

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APPENDIX A

Supreme Court of Missouri
en banc

Missouri Church of Scientology,
Plaintiff-Appellant,
vs.

State Tax Commission of Missouri,
J. E. Riney, Don G. Williams,
Robert F. Love, Commissioners of
State Tax Commission of Missouri,
John K. Travers, Collector of
Revenue, City of St. Louis, and
Glenn J. McBrady, Assessor, City
of St. Louis,
Defendants-Respondents.

No. 59551

Appeal From the Circuit Court of the
City of St. Louis
Honorable Lackland H. Bloom, Judge

This proceeding arose with the addition of appellant's tangible personal property to the tax rolls for the year 1974 by the St. Louis City Assessor. Obtaining no relief by successive appeals to the Board of Equalization and the State Tax Commission, appellant sought judicial review claiming exemption from ad valorem taxation under Mo. Const. Art. X, § 6, and § 137.100,¹ on the ground its property was "used exclusively for religious worship".² No challenge is made to the assessed

¹ All statutory references are to RSMo 1969.

² Mo. Const. Art. X, § 6 provides in pertinent part: "[A]ll property, real and personal, not held for private or corporate profit and

valuation of appellant's property but only to the denial of the claimed exemption.

Generally the scope of judicial review for administrative agency decisions is limited to a determination of whether the order is supported by "competent and substantial evidence upon the whole record" as provided in § 536.140-2(3). However, this case does not involve the exercise by the agency of administrative discretion in the light of the facts under § 536.140-2, but only the application by the agency of the law to the facts, accordingly the court may weigh the evidence for itself giving due weight to the opportunity of the agency to observe the witnesses and to the expertise and experience of the Commission, § 536.140-3. It is by this standard we examine appellant's contentions of error.

In the hearing before the Commission twenty-two proposed exhibits had been marked and identified during testimony of the appellant's sole witness though they were neither offered nor accepted as evidence by the Commission.³ Urging their

used exclusively for religious worship, . . . may be exempted from taxation by general law." (Emphasis ours.) Pursuant to this authority, the legislature by § 137.100(5), RSMo 1969 exempted from state, county and local taxation, "All property, real and personal, actually and regularly *used exclusively for religious worship*, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, . . ." (Emphasis ours.)

³ These exhibits consist, among others, of the appellant's Articles of Incorporation and amendments thereto, bylaws, letters of commendation for charitable work done, a bound volume entitled "The Background and Ceremonies of the Church of Scientology of California, Worldwide" which appellant's witness, Rev. Rock, identified as "the ceremonies book that we use at Sunday services and we use this as a standard format for our other ceremonies: weddings, christenings, funerals. And it is also background information which relate to philosophical roots of the church to other religions, Buddhism, Hinduism and early Christianity." Another book entitled "Scientology: A World Religion Emerges in the Space Age" was described as a recently published work containing background information concerning the philosophy and ceremonies of the "Church of Scientology".

consideration by this court, appellant cites *Hilke v. Firemen's Retirement System of St. Louis*, 441 S.W.2d 730, 733 (Mo. App. 1969), as authority for such consideration, however, we perceive factual differences distinguishing *Hilke* from the case at bar. There, in a claim for disability benefits, certain medical reports had not been properly offered before the Firemen's Retirement System Board. On appeal the court stated: "Although the record does not show the reports were offered in evidence in ritualistic language, we hold that the method of putting them before the Board for its consideration fully met the less formal procedural requirements of an administrative hearing." [I.c. 733] The items so considered, despite lack of formal offer, were medical reports prepared pursuant to the provisions of §87.160.2, for the express purpose of informing the Board of the facts and the conclusions and recommendations of the medical examiners. It is clear the statute requiring the examining physicians to "report in writing to the board," contemplated that the reports be available to assist the Board in its deliberation and equally important the Board and the parties intended the use of those reports as evidence.⁴ Those facts, not present here, were determinative of the issue. Though counsel for the Tax Commission stated to the trial court and to this court in oral argument he would not have objected to the introduction of the exhibits had they been offered, the fact remains they were not and no stipulation waiving objection to their consideration has been presented. The Commission had

⁴ The Court in *Hilke* at 733 states: "Early in the hearing plaintiff's counsel referred to plaintiff's injury report lodged in one of the Board's two files and said, 'I imagine it is part of this official document that we have introduced in evidence here.' Defendant's counsel agreed and thereupon the Board's files were marked as Exhibits 1 and 2. Later, plaintiff's counsel formally offered other documents in evidence, but in speaking of documents already in Exhibits 1 and 2 he referred to them as 'part of the file.' Near the end of the Board hearing, defendant's counsel wished to introduce City Ordinance 50707 as Exhibit 3; he stated he wanted the record to show that the ordinance was introduced as an exhibit 'with the others' . . ." (Emphasis ours.)

before it no offer of evidence nor objections thereto on which to rule, neither was the Commission apprised of counsel's later announced attitude on the matter. Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable. *State ex rel. Bond v. Simmons*, 299 S.W.2d 540 (Mo.App. 1957). Consistent with these holdings, § 536.070 provides in subsection 2 that "each party" in an administrative hearing "shall have the right . . . to *introduce exhibits*." (Emphasis ours.) No mention is made of other procedures for admission of exhibits as a part of the record in such proceedings except *subsection 5* which provides that "Records and documents of the agency (which also must be offered in evidence) . . . may be considered as a part of the record *by reference thereto* when so offered." (Emphasis ours.) No provision is made that records of any other type may be received in this manner. While we do not suggest that parties may not stipulate for the admission of such proposed evidence and waive objection thereto, no authority appears for the course contended by appellant. The exhibits will not be considered a part of the record for review.

The Commission (whose extensive findings and conclusions are set out in the attached appendix) properly found the office equipment and furniture in question were "used in the promotion of the organization including such purposes as record keeping and providing mailings to the membership." As to the religious nature of appellant, the Commission concluded that "while the appellant has some of the trappings and accouterments of an organized religion, it appears to be more an applied philosophy which has a certain religious connotation, but which falls short of *being devoted to the worship of the Supreme Being*, which this Commission concludes is necessary for the property owner to have its property considered exclusively for religious worship." (Emphasis ours.) Further, that "an applied religious philosophy" is not identical for purposes of exemption "with an organized religion devoted to

religious worship." The Commission then held: "The personal property of the appellant has not, therefore, been shown to be used exclusively for religious or charitable purposes and therefore cannot be exempted from ad valorem taxation." Considering the findings and conclusions in their entirety and particularly those immediately above cited, it appears the order rests not on the lack of *exclusivity* or *extent* of use, but on the failure to show the character of the use as "for religious worship." The Commission determined the statutory and constitutional phrases "used exclusively for religious worship" postulate more than an "applied philosophy which has a certain religious connotation." It found the statute and constitution instead require a belief in and devotion to a Supreme Being. For reasons hereinafter discussed we affirm.

The term religious worship in the commonly accepted sense includes as a necessary minimum a belief in the Supreme Being of the universe. Generally religious worship is expressed by prayers, reverence, homage and adoration paid to a deity and include the seeking out by prayer and otherwise the will of the deity for divine guidance. Webster's New World Dictionary of the American Language, Second College Edition, copyrighted in 1974, defines religion as "belief in a divine or superhuman power or powers to be obeyed and worshiped as the creator[s] and ruler[s] of the universe; b) expression of such a belief in conduct and ritual." "Worship" is defined as "reverence or devotion for a deity; religious homage or veneration; b) a church service or other right showing this." In Webster's Third New International Dictionary, copyrighted 1976, religion is defined as "the personal commitment to and serving of God or a God with worshipful devotion, conduct in accord with divine commands esp. as found in accepted sacred writings or declared by authoritative teachers, a way of life recognized as incumbent upon true believers, and typically the relating of oneself to an organized body of believers." Another definition suggested is "a personal awareness or conviction of the existence of a su-

preme being or supernatural powers or influences controlling one's own, humanity's, or all nature's destiny." In this authority *worship* is defined as "the reverence or veneration tendered a divine being or supernatural power; also: an act, process, or instance of expressing such veneration by performing or taking part in religious exercises or ritual." Other dictionaries consulted provide similar definitions.

In 1890 the United States Supreme Court stated "The term 'religion' has references to one's view of his relations to his Creator and to the obligations they impose of reverence for his being and character, and of obedience to his will." *Davis v. Beason*, 133 U.S. 333, 342 (1890). Similarly the Oklahoma Court of Criminal Appeals in *McMasters v. State*, 21 Okla. Crim. 318, 207 P. 566 (1922), defined religion as "all forms of belief in the existence of superior beings, exercising power over human beings by volition, imposing rules of conduct with future rewards and punishments." Justice Hammer in *Nikulnikoff v. Archbishop and Consistory of Russian Orthodox Greek Catholic Church, et al.*, 255 N.Y.S. 653, 142 Misc. 894 (1962), described the term as "a bond uniting man to God and a virtue whose purpose is to render God the worship due him as the source of all being and the principle of all government of things." Mr. Justice Hughes in his dissent in *United States v. MacIntosh*, 283 U.S. 605, 633 (1931) (the dissent involved another issue) stated: "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation." Joining in this dissent were Holmes, Stone and Brandeis. Hughes' isolation and identification of the indispensable ingredient of religion remains a basic guide in this area of the law. When considering the exemption provisions of the Selective Training and Service Act of 1940 for those conscientiously opposed to participation in war "by reason of religious training and belief" the 9th Circuit in *Berman v. United States*, 156 F.2d 377 (9th Cir. 1946), after citing the above quoted phrase on the essence of religion from *MacIntosh* stated [l.c. 380]:

"It is our opinion that the expression, 'by reason of religious training and belief' is plain language, and was written into the statute for the specific purpose of distinguishing between a conscientious social belief, or a sincere devotion to a high moralistic philosophy, and one based upon an individual's belief in his responsibility to an authority higher and beyond any worldly one . . . We are not saying that man's comprehension of religion is static and remains today the same as a short hundred and fifty odd years ago in the area of our constitution-making. . . . Nature and God seem so close to Oneness that some thinkers blend them inseparately."

Commenting on the nature of religion the court stated, it "involves a process of vital and reciprocal interplay 'between the human and the super natural.'" More recently the Supreme Court of Kansas in *Board of Trustees of the Kansas East Conference of the United Methodist Church v. Cogswell*, 473 P.2d at page 1 (Kan. 1970), adopted and applied the definition of religion enunciated in *Davis v. Beason, supra*, as that intended by the Kansas constitutional and statutory provisions permitting tax exemption for "all property used exclusively for . . . religious purposes."

The Supreme Court in *United States v. Seeger*, 380 U.S. 163 (1965), (urged as authority for reversal by appellant) interpreting the Universal Military Training and Service Act and claimed exemptions by conscientious objectors under § 6-J, when reversing the convictions, addressed the meaning of the expression "religious training and belief" as used in the Act. The Act exempted those who opposed participation in war by reason of their "religious training and belief" and the court pointed out that the Act defined that phrase as "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological or philosophical views or a merely personal moral code." [l.c. 165] The court observed that Congress

had adopted by this definition the language of Chief Justice Hughes in *United States v. MacIntosh*, *supra*, but substituted the phrase "Supreme Being" for the "Appellation God." The *Seeger* court, however, construed this substitution of terms as license to extend the Congressional intent to include a definition of "belief in a Supreme Being" as follows: "It is essentially an objective one, namely, does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption."

Though announcing this diluted version as the intended legislative meaning of "religious . . . belief", the court nevertheless acknowledged that Congress had referred in the Act to "this higher authority." [I.c. 175] The *Seeger* definition is not one of constitutional construction but of statutory interpretation neither controlling nor persuasive here for a number of reasons. Contrary to this appellant's argument that the Court in effect excised the concept of a Supreme Being from "religion" it can reasonably be said that when the court spoke of "claimed belief" as occupying "the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption," (Emphasis ours), the term necessarily includes God or Supreme Being. This because the "claimed belief" must equate qualitatively and quantitatively with the place God holds in the life of one clearly qualified for exemption (e.g., a devout member of the Society of Friends) and such would require a devotion to God (or an equivalent) accompanied by a divinely inspired rejection of violence in the form of war. It is against this or a similar orthodox standard of another "clearly qualified for exemption" that an objector's "claimed belief" must measure. In the alternative, *Seeger* may be said to mean that the "claimed belief" occupies the same place in the life of the objector as that which an orthodox belief in God holds in the lives of others clearly exempted, but the objector may choose not to use the word "God" or "Supreme Being". In that sense *Seeger's* interpretation of the Act seems more a matter of semantic than sub-

stance, but in no sense can that case be considered as declaring a constitutional standard circumscribing state action in the field of tax exemption.

Appellant directs our attention to other authority, the most notable, a decision of the California court of appeals in *Fellowship of Humanity v. County of Alameda*, 315 P.2d 394 (Cal. App. 1957), which considered a claimed exemption from city and county property tax on the ground that the property was used "solely and exclusively for religious worship" within the meaning of the California Constitution. When defining the term religion the court held it is improper to include in the concept a belief in God or a Supreme Being. The court stated "the belief or nonbelief in a Supreme Being is a false factor," and went on to say "This simply means that 'religion' fills a void that exists in the lives of most men. Regardless of why a particular belief suffices, as long as it serves this purpose, it must be accorded the same status of an orthodox religious belief. . . . [T]he proper interpretation of the terms 'religion' or 'religious' in tax exemption laws should not include any reference to whether the beliefs involved are theistic or nontheistic. Religion simply includes: [1] a belief, not necessarily referring to supernatural powers; [2] a cult, involving a gregarious association openly expressing the belief; [3] a system of moral practice directly resulting from an adherence to the belief; and [4] an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment." Under this loose concept it is readily apparent any organization espousing moral principles, without theistic foundation, to which the membership openly express belief might opt for the exempt status. We are unwilling to ascribe such meaning to the expression "religious worship" in Missouri's tax law. Instead we conclude that the constitutional and statutory term religious worship of Art. X, § 6 and § 137.100 embody as a minimum requirement a belief in the Supreme Being.⁵

⁵ Appellant contends that requiring devotion to worship of the Supreme Being as a sine qua non to classification as religion and en-

Though appellant contends that worship of a Supreme Being is not indispensable to a definition of "religious worship", it argues nevertheless that Scientology "acknowledges the existence of God and recognizes and espouses devotion to a Supreme Being" establishing its entitlement to the exemption. It further argues no evidence supports the Commission's conclusion that Scientology "appears to be more an applied philosophy which has a certain religious connotation, but which falls short of being devoted to the worship of the Supreme Being." This brings us to the questions of credibility and burden of proof.

An administrative agency may base its decision solely on a finding of lack of credible testimony, though such testimony is uncontradicted or unimpeached. *Koplar v. State Tax Commission*, 321 S.W.2d 686 (Mo. 1959). *Veal v. Leimkuehler*, 249 S.W.2d 491 (Mo.App. 1952); *State ex rel. Kahler v. State Tax Commission*, 393 S.W.2d 460 (Mo. 1965); and *Scott v. Wheelock Bros.*, 209 S.W.2d 149 (Mo.banc 1948). However, the Commission may not arbitrarily disregard or ignore undisputed testimony of a witness not shown to have been impeached or disbelieved by the Commission. Such was the case of the county assessor in *Koplar, supra*. Unlike *Koplar*, the Commission here made the following findings as to credibility of the witness: "We find the testimony of the Reverend Frederick M. Rock generally not to be credible and worthy of belief in particular in respect to

titlement to exemption from ad valorem taxation would be in direct contravention of the First Amendment citing *United States v. Seeger*, 380 U.S. 163 (1965), *Torcaso v. Watkins*, 367 U.S. 488 (1961), and *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1 (1947). Appellant gives little explanation how these cases support its position and the cases do not justify the contention made. *Seeger*, discussed at length above, involves an interpretation of the Selective Service Act, with its main thrust defining the statutory terms religious belief and Supreme Being. *Torcaso* does not define religion, holding only that a state may not require an oath declaring a belief in God as a prerequisite for holding public office but indicated nothing that would limit a legislative grant of tax exempt status to religious organizations. *Everson* dealt with the constitutionality of the states (Maryland) providing bus service to parochial school students. It did not suggest principles pertinent to the issues here.

his description and categorization of the activities of the organization, its alleged religious services, its financial structure and the nature of the so-called donations which are made to the organization. The Commission finds that there is no sufficient credible evidence presented by the appellant to satisfy the burden placed upon one claiming exemption from taxation." The Commission then concluded "that with the lack of credibility found by this Commission in the testimony of the witness Rock and the lack of corroboration by any independent authority on contemporary religions that the property owner *has not satisfied the burden* placed on him." While the Commission findings are not insulated from review, the court must "give due weight to the opportunity of the agency to observe the witnesses." The Commission had ample opportunity to observe the demeanor as well as the words of the witness and make a determination of credibility from its point of vantage. It recognized testimonial inconsistencies and those things petitioner failed to establish, finding that "appellant has some of the trappings and accouterments of an organized religion, it appears to be more an applied philosophy which has a certain religious connotation, but which falls short of being devoted to the worship of a Supreme Being." The Commission could properly consider the financial interest of the witness in the outcome of the proceeding and the absence of corroborating testimony.⁶ Giving due weight to the opportunity

⁶ The Church of Scientology presented one witness, Frederick M. Rock, a recently ordained twenty-six year old minister of the church who detailed the beliefs, activities, functions and history of the church. He testified the church teaches the existence of God; that man has a spirit analogous to a soul; that religious services are conducted each Sunday which include a sermon and prayers; ministers of the church can perform marriage services, funerals, and christenings; the church has a creed and worship services similar to those of other religions; a code or doctrine and religious tenets which preach: (1) man is good but must struggle to survive, (2) man has a spiritual nature which gives him inalienable rights, and (3) each person is responsible for and to the world; that the church is active in charitable works; a training program for ministers which was not characterized as a seminary; the church is an applied religious philosophy because it teaches a way of life relating to the spirit and to God; and finally that all the property in question is used to further the func-

of the Commission to observe the witness and the factors noted we find nothing sufficient to disturb its finding that the witness was not credible.

The law places a substantial burden on those claiming exemptions under the referenced constitutional and statutory provisions to establish that their property falls within an exempted class. *City of St. Louis v. State Tax Commission*, 524 S.W.2d 839 (Mo.banc 1975). It is firmly engrained that taxation is the rule and exemption therefrom the exception, *Midwest Bible and Missionary Institute v. Sestric*, 364 Mo. 167, 260 S.W.2d 25, 29-30 (1953), and such claims are not favored in the law. *Community Memorial Hospital v. City of Moberly*, 422 S.W.2d 290 (Mo. 1967). The extent of this burden has been characterized as requiring proof beyond a reasonable doubt. *Fitterer v. Crawford*, 157 Mo. 51, 57 S.W. 532 (1900).

Weighing the evidence in light of the appellant's sole witness' want of credibility and against the substantial burden of proof required, we find the record supports the Commission findings.

The judgment is affirmed.

ALBERT L. RENDLEN, Judge

tions of the church. However, this picture was clouded by admitted atypical features. For example, Rev. Rock testified members of the Church of Scientology can actively practice and belong to other religious faiths (i.e., Catholic priests and Jewish rabbis belong and actively pursue the worship of the Church of Scientology); the church raises its funds by accepting "donations" for counseling services to members and non-members alike for which a fixed schedule sets the charges, in either service or cash, however, about ten percent of the counseling sessions are gratuitous; the church has no structured seminary but offers courses in which the student sets his learning pace and at the end of which he may be ordained as a minister; theirs is an applied religious philosophy teaching methodology and the church keeps no formal membership rolls. As to the interest of the witness he was in the employ of the church receiving about \$3,000.00 annually from monies raised in the St. Louis area. No attempt was made to corroborate Rock's testimony with that of church officials, parishioners, or others familiar with appellant and its system of beliefs. No income or expense statements were introduced and the sources of income and use of funds were ambiguous at best.

Morgan, C.J., Bardgett, Henley,
Finch and Donnelly, JJ., concur;
Seiler, J., concurs in result in
separate opinion filed.

Appendix

MISSOURI STATE TAX COMMISSION

Findings of Fact

1. The Missouri Church of Scientology was organized in 1969 and is a not-for-profit corporation. The earliest incorporation of the Church of Scientology elsewhere in the United States was in 1954.
2. The property in question was used in its headquarters at 4221 Lindell on January 1, 1974.
3. There are ceremonies or services conducted on Sunday afternoons at the headquarters. These are the only regular services (Tr.14).
4. These services are presided over by ministers.
5. The founder of the Church is L. Ron Hubbard who is still living.
6. There is literature which is disseminated which encourages other persons to join and there are other efforts made to achieve the same purpose.
7. The Missouri Church of Scientology also engages in public affairs such as conducting a drug counseling program.

8. The property in question consisting of office equipment and furniture is used in the promotion of the organization including keeping its records, providing mailings to the membership.

9. The Church of Scientology does not have formal seminaries but requires that prospective ministers go through counseling courses which are conducted in their headquarters buildings.

10. There is no formal membership roll for the Church of Scientology.

11. The Church of Scientology is an applied religious philosophy having as its members persons who belong to other formal religions such as members of the Catholic and Luthern churches and including Catholic priests and Jewish rabbis (Tr. 23). Membership in other religious faiths does not preclude membership in the Church of Scientology.

12. There was no corroborative evidence from any independent witness presented to the effect that the Missouri Church of Scientology is recognized by any other religious faiths as being a bona fide religion.

13. We find the testimony of the Reverend Frederick M. Rock generally not to be credible and worthy of belief in particular in respect to his description and categorization of the activities of the organization, its alleged religious services, its financial structure and the nature of the so-called donations which are made to the organization.

14. The Commission finds that there is no sufficient credible evidence presented by the appellant to satisfy the burden placed upon one claiming exemption from taxation.

Conclusions of Law

1. Under Article X, Section 6 of the Missouri Constitution and Section 137.100 R.S.Mo. all property used exclusively for religious worship is exempt from taxation.

2. This Commission has jurisdiction of this proceeding and the parties hereto, and is the sole judge of the credibility of the witnesses appearing before it.

3. It is the function of the Commission to determine the credibility of witnesses and to judge what probative weight or value to give to their testimony.

4. As to claims for exemption from taxation the burden is on the owner claiming his property to be exempt to establish that his property falls within the exempted class. *National Cemetery Ass'n of Missouri v. Benson*, 129 S.W.2d 842 (Mo. 1939).

5. Exhibits which were marked and identified but which were never offered into evidence cannot be considered as such by this Commission in its capacity as the trier of fact.

6. Claims for exemption from taxation are not favored in the law and provisions for exemption are strictly construed against one who claims to be exempt.

7. It is concluded that with the lack of credibility found by this Commission in the testimony of the witness Rock and the lack of corroboration by any independent authority on contemporary religions that the property owner has not satisfied the burden placed upon him.

8. While the appellant has some of the trappings and accoutrements of an organized religion, it appears to be more an applied philosophy which has a certain religious connotation, but which falls short of being devoted to the worship of the Supreme Being, which this Commission concludes is necessary for

the property owner to have its property considered exclusively for religious worship. The Commission does not believe that an applied religious philosophy is identical for purposes of exemption with an organized religion devoted to religious worship.

9. The personal property of the appellant has not, therefore, been shown to be used exclusively for religious worship or charitable purposes and therefore cannot be exempted from ad valorem taxation.

10. The decision of the Board of Equalization placing an assessment of \$5,000.00 upon the personal property of the Missouri Church of Scientology for the year 1974 is herewith affirmed.

Supreme Court of Missouri
en banc

Missouri Church of Scientology,
Plaintiff-Appellant,

v.

State Tax Commission of Missouri, J.
E. Riney, Don G. Williams, Robert
F. Love, Commissioners of State
Tax Commission of Missouri, John
K. Travers, Collector of Revenue,
City of St. Louis, and Glenn J. Mc-
Brady, Assessor, City of St. Louis,
Defendants-Respondents.

No. 59551

Opinion Concurring in Result

As I understand the situation, the only evidence offered by appellant before the commission was a witness whom the com-

mission found not credible with respect to his testimony bearing on the issue. We are not going to disturb that finding. Beyond question, then, appellant has not carried the burden of establishing an exemption from taxation. In my opinion, this disposes of the appeal.

We should be careful not to do anything to restrict religious freedom and I am sure the principal opinion has no intention to do otherwise, but if it is necessary to define religious worship or religion, I do not believe we should restrict the definition to conventional orthodox religions, which it seems to me is what the principal opinion does. History shows that what is orthodoxy today was once heresy. I therefore concur in result only.

ROBERT E. SEILER
Judge

APPENDIX B

In the Circuit Court of the City of St. Louis
State of Missouri

Missouri Church of Scientology,	} 48,850-F. Division 2.
Plaintiff,	
vs.	
State Tax Commission of Missouri, et al.,	
Defendant.	

Memorandum Opinion

This cause is before the Court upon a Petition for Review of an Order of the State Tax Commission of Missouri entered November 4, 1975, affirming a decision of the Board of Equalization of the City of St. Louis placing an assessment of \$5,000.00 upon the personal property of petitioner for the year 1974. The claim of petitioner to tax exempt status under Article X, Section 6 of the Missouri Constitution and Section 137.100 V.A.M.S. for the reason that its property was "not held for private or corporate profit and was used exclusively for religious worship" was rejected as not having been sustained by the credible evidence.

The Commission made findings of fact and entered conclusions of law. The Commission found that the Missouri Church of Scientology was organized in 1969 as a not-for profit corporation, ceremonies are conducted on Sunday afternoons which are presided over by ministers. Literature is disseminated encouraging other persons to join and other efforts are made to obtain members. The Church does not have formal seminaries

but requires that prospective ministers go through counseling courses which are conducted at its headquarter's buildings. No formal membership role is maintained and membership in other religious faiths does not preclude membership. The Commission found the Church "is an applied religious philosophy," and found "there was no corroborative evidence from any independent witness presented to the effect that the Missouri Church of Scientology is recognized by any other religious faiths as being a bona fide religion." The Commission found that the Church also engages in public affairs such as conducting a drug counseling program.

Testimony as to the structure and activities of petitioner was presented by Reverend Frederick M. Rock. The Commission found his testimony "generally not to be credible and worthy of belief in particular in respect to his description and categorization of the activities of the organization, its alleged religious services, its financial structure and the nature of the so-called donations which are made to the organization."

In support of its conclusion that petitioner had not sustained its burden of establishing its right to tax exemption by credible evidence, the Commission concluded as a matter of law as follows:

"While the appellant has some of the trappings and accoutrements of an organized religion, it appears to be more an applied philosophy which has a certain religious connotation, *but which falls short of being devoted to the worship of the Supreme Being, which this Commission concludes is necessary for the property owner to have its property considered exclusively for religious worship.*" (emphasis added).

There were some 22 exhibits which were marked on behalf of petitioner at the hearing before the Commission, were identified and described by Rev. Rock while testifying. They were not *formally* offered into evidence and were accordingly not

considered by the Commission in reaching its findings or passing on the credibility of Rev. Rock. In this court, counsel for the Commission concedes that had they been formally offered into evidence before the Commission, he would have made no objection and that they would have been admitted into evidence. These exhibits consist, among other things, of the Articles of Incorporation of Petitioner and amendments thereto, By-Laws, Letters of Commendation for charitable work done, a bound volume entitled "The Background and ceremonies of the Church of Scientology of California, World Wide," which Rev. Rock identified as follows (TR p. 12):

"This book is the ceremonies book that we use at Sunday services, and we use this as a standard format for our other ceremonies: weddings, christenings, funerals. And it also has background information which relate to philosophical roots of the Church to other religions, Buddhism, Hinduism, and early Christianity."

Exhibit 2 entitled: "Scientology: A World Religion Emerges in the Space Age." Of this exhibit Rev. Rock testified: (TR p. 13)

"This is a book that was recently published that also has background information on the Church of Scientology and information concerning our philosophy and ceremonies. It also has documentations, affidavits by religious leaders of other religious organizations, people that hold public positions that are well recognized and established and attest to the religious nature of the Church of Scientology. Some of them are members of it, some of them are members of other faiths."

Rev. Rock testified in substance as follows:

That he has been a minister in the Church of Scientology since 1971. His training consisted of over 600 hours of training and background of the Church and other religions, including on

the job training as a counsellor and the taking of a special minister's course. The Church was organized in 1969 under the laws of Missouri. The first church was incorporated outside of Missouri in 1954 and consists of organizations in seven other states and Washintgon, D.C., and organizations were being formed in at least five other states. There are over 150 organizations in the English speaking world.

Rev. Rock stated that the Church does not keep a strict membership role but estimated it had a world-wide membership of three million and over a million in the United States.

With respect to the beliefs of the Church the witness was asked: (TR p. 13)

"Q. Does the church teach that there is a God, sir?

A. Yes, it does.

Q. And believes in God?

A. Yes."

He stated. "We believe that man basically is a spiritual being, that he has a body, but he is not the body, that the life-giving force, the Elon Vitalis, as we used to call it, is a spirit. You are all spirits, basically."

The Church holds services every Sunday afternoon. A sermon is delivered and the prayers set out in Exhibit 1 are said.

He, as a minister, conducts marriage ceremonies, christenings, and although he hasn't yet conducted a funeral service, other ministers of the Church have. He estimated that his Church was responsible for about six thousand members.

The creed used in his Church is the same as that used all across the world. The Church has an international government and was founded by L. Ron Hubbard. They distribute religious literature concerning the spiritual nature of man.

The Church engages in public activities and had groups to deal with the aged, retarded, alcoholics, and criminal rehabilitation. They conducted last summer a charity drive and donated articles for use in St. Louis area hospitals. They have an active Citizens Commission on Human Rights, fighting for the rights of mental patients.

Rev. Rock identified certain letters of thanks and appreciation from public organizations for contributions and services rendered by the Church in providing concerts, toys, clothes, and books to various institutions and hospitals in Missouri. (TR pp. 18-21)

The personal property which is the subject of the present tax exemption claim consists of desks, chairs, filing cabinets, tables, shelves, bookcases, printing presses, machines, tape players, tapes, drapes, and wastebaskets, which on January 1, 1974 were located in a building leased by petitioner at 4221 Lindell Boulevard, in the City of St. Louis. Since January 1, 1974, petitioner has purchased real estate at 3730 Lindell Boulevard, but the assessment of that property is not involved in the proceeding.

Rev. Rock testified that this property is used in promoting membership, printing literature, to keep and maintain records, student folders, and the everyday activities of the Church.

He testified that Scientology is an "applied religious philosophy." Members of all religious faiths may join.

On cross-examination Rev. Rock acknowledged that the Church had no separate seminaries for the training of ministers; that there was no definite fixed course of study; that each student set his own pace. There are approximately 60 ministers in St. Louis and another 60 studying to be ministers. The Church derives income "by accepting money for counseling and for courses." A "fixed donation is asked." Specific charges are made for various services performed which appear

on a schedule. Anyone can avail themselves of these services by paying the charge. Staff members are paid a salary.

The Sunday service consists basically of the creed, the sermon, a prayer for total freedom, a few moments of silence.

Free counseling is given. A person who has an "upset" can get one counseling service free.

In describing the tenets of the Church, Rev. Rock stated: (TR p. 39)

"We believe that man is basically good, we believe that he is trying to survive, we believe that he has a spiritual nature. We believe that because man has a spiritual nature he has inalienable rights, and these cannot be denied by other men. We believe that a person has a right to be what he wants to be, to do what he wants to do, to have what he wants to have as long as he doesn't infringe upon those same rights of others. We believe that man has the responsibility to himself, to his family, to members of his group, to all the rest of the human race, to the animal world, to the physical earth, and to God."

In reviewing an order of the State Tax Commission, this Court will not disturb the factual findings of the Commission unless it finds they are unsupported by competent and substantial evidence upon the whole record, or were arbitrary, capricious or unreasonable, or the Commission abused its discretion. Section 536.140 V.A.M.S. *Greene County v. Hermel, Inc.*, 511 S.W.2d 762, 768 (Mo., 1974). The Court is not bound, however, by the Commission's decisions on questions of law. *Wolf v. Missouri State Training School for Boys*, 517 S.W.2d 138, 142 (Mo. banc, 1975). In reviewing claims for tax exemption the Court is guided by the rules that tax exemption statutes are to be strictly but reasonably construed and that the burden is on the owner, claiming that his property is exempt, to establish that his property falls within the exempted

class. *City of St. Louis v. State Tax Commission*, 524 S.W.2d 839, 843-4 (Mo. banc, 1975).

At the threshold of this review, the Court is faced with the legal conclusion reached by the Commission to the effect that relator was not entitled to exemption as a religious organization because such an organization must be "devoted to the worship of *the* Supreme Being." (emphasis added). This Court, as heretofore indicated, is not bound by this conclusion. Nor, as a matter of fact, is it precluded from reexamining the evidentiary and factual basis upon which the conclusion rests as to petitioner. Thus Section 536.140(3) provides in part:

"Whenever the action of the agency being reviewed does not involve the exercise by the agency of administrative discretion in the light of the facts, but involves only the application by the agency of the law to the facts, the Court may weigh the evidence for itself and determine the facts accordingly."

In this case the Commission admittedly did not examine the twenty-two exhibits marked as evidence and identified by Rev. Rock for the reason that they were not formally offered into evidence. The Court has heretofore set out Rev. Rock's testimony relative to these exhibits, many of which form the factual basis of petitioner's claim to exemption. Ignoring the exhibits, which were testified to without objection, and basing its finding on the "incredibility" of the balance of Rev. Rock's testimony, the Commission reaches an unsound conclusion of law. This Court is of the opinion that the exhibits were properly before the Commission and should have been considered. In a reverse situation wherein an agency examined documents before it which were not formally offered, the Missouri Court of Appeals rejected the petitioner's objection that the agency acted improperly in basing its findings on evidence not before it. *Hilke v. Firemen's Retirement System of St. Louis*, 441

S.W.2d 730, (Mo. App., 1969). The Court stated, *l.cit.* p. 733:

"... The procedural standards of administrative bodies differ from those of courts. While the fundamental principles of judicial inquiry must be observed in administrative proceedings, the strict judicial procedure of the courtroom should not be required before an administrative body of laymen; there the proceedings may be simpler and less technical than in the courtroom . . . Thus counsel treated the medical reports as documents properly before the Board for its consideration. Although the record does not show the reports were offered in evidence in ritualistic language, we hold that the method of putting them before the Board for its consideration fully met the less formal procedural requirements of an administrative hearing."

Counsel for the City of St. Louis having admitted that the exhibits were admissible into evidence except for the lack of formal tender, it was error for the Commission to ignore them.

A consideration of such evidence would have established that under its Missouri Articles of Incorporation, as amended, "Church of Scientology of Missouri" was incorporated under the Missouri General Not-for Profit Corporation Act to "act as a church for the propagation and administration of the religious faith, doctrine and practices known as 'Scientology,' and to act as a Church in the religious worship of that faith."

"In furtherance of such objects and purposes, the Church shall regulate and conduct religious services for its congregations, and engage in other activities of a religious and educational nature for the local propagation of its Faith. The purpose of such activities shall be to foster and enhance the spiritual welfare of its followers, and to espouse such evidences of *the* Supreme Being and Human Spirit as may be knowable to man and by their use and dissemination to bring a greater tranquility,

order, and survival to man in the external world." (Exs. 3, 12, 14).

Exhibits 1 and 2 set forth in book form the background and history of the church, its creed, doctrine, practices, organization, ethical codes, and forms of service, procedure for weddings, funerals, and comparison with recognized religions of the east and west, some of which such as Buddhism fail to meet the "Supreme Being" test required by the Commission.

It is not essential to this review to detail the creed, beliefs, practices, structure, ethical code of petitioner or to compare them in theory or practice with the doctrines, rituals and ethics of commonly acknowledged religions.

It would appear from petitioner's literature that it acknowledges the existence of God and recognizes and espouses devotion to a Supreme Being, although neither concept may hold the same force or meaning that would be ascribed to them by Christian religious concepts. But that cannot lawfully deprive petitioner of religious status.

In *Washington Ethical Society v. District of Columbia*, 249 F.2d 127, (USCA, D.C., 1957) the Court said:

"To construe exemptions so strictly that unorthodox or minority forms of worship would be denied the exemption benefits granted to those conforming to the majority beliefs might well raise constitutional issues."

In *United States v. Seeger*, 380 U.S. 163, 85 S.Ct. 850, 13 L.Ed2d 733 (1965). The Court broadened the Congressional definition of "religious training and belief" as applied to applications for exemption from military service, which Congress defined in part as "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation . . ." to one comprising a "sincere and meaningful belief occupying in the life of its possessor a place parallel to that filled

by the God of those admittedly qualified for the exemption." Similarly a Congressional tax exemption statute for the District of Columbia was broadened in *Washington Ethical Society v. District of Columbia*, supra, 1.cit., p. 129. Referring to the various definitions of religion, the court there states,

"... the terms 'religion' and 'religious' in ordinary usage are not rigid concepts. Indeed, the definitions in these standard works taken together are by no means free from ambiguity. Some definitions would include only the Christian religion. Some call for belief in and worship of a divine ruling power or recognition of a supernatural power. But also included in these definitions is the idea of 'devotion to some principle; strict fidelity or faithfulness; conscientiousness, pious affecting or attachment.'"

See also *Fellowship of Humanity v. County of Alameda*, 415 P.2d 394, 406 (1957) in which the District Court of Appeal in California held that the state has no power to decide the validity of beliefs held by the group seeking tax exemption on religious grounds.

"The only inquiry in such a case is the objective one of whether or not the belief occupies the same place in the lives of its holders that the orthodox beliefs occupy in the lives of believing majorities and whether a given group that claims the exemption conducts itself the way groups conceded to be religious conduct themselves . . . Under this test the belief or non-belief in a Supreme Being is a false factor." (Emphasis added).

No Missouri case in point has been found. However under the evidence and the authorities cited, the Court holds that the Commission erred as a matter of law in concluding that devotion to the worship of "the Supreme Being" is an essential test which must be met to entitle an organization to tax exemption under

Missouri constitutional and statutory provisions exempting property used exclusively for religious worship.

However, such holding does not dispose of this review. The Commission found that relator failed to meet the dual burden required for tax exemption as to "exclusivity." In other words under the statute, tax exemption is predicated on the activities of the organization claiming exemption being "exclusively" devoted to religion. A full review of the evidence before the Commission warrants the finding of the Commission, at least as to the tax and year at issue, that "The personal property of the appellant has not been shown to be used *exclusively* for religious or charitable purposes and therefore cannot be exempted from ad valorem taxation." The record is devoid of any income or expense statements; the exhibits and testimony hint at the nature of so-called "donations" but leave the details both as to the factual bases of the sources of income, the use of the funds, and the so-called charitable work of petitioner in doubt. This court cannot say, because of the lack of adequate financial evidence, that the Commission erred in raising a credibility question. If the issue as to exclusivity arises as to future tax years, the burden of course will fall upon petitioner to prove its right to the exemption by showing by substantial and credible evidence that its income, expenditures, and activities are actually derived from and deployed exclusively in furtherance of its religious affairs.

As for the tax year in question, the finding of the Commission that petitioner has failed to sustain the burden that it is entitled to tax exemption is affirmed.

/s/ LACKLAND BLOOM
Judge

March 8, 1976

APPENDIX C

Decision of State Tax Commission

On November 6, 1975, the Following Decision Was Filed:
Before the Tax Commission of the
State of Missouri

Missouri Church of Scientology,	}	Case No. 1974-452
Appellant,		
vs.		
City of St. Louis,	}	
Respondent.		

Decision

This is an appeal by the Missouri Church of Scientology from an assessment of its personal property made by the Assessor of the City of St. Louis for the year 1974. The assessment was in the amount of \$5,000.00. There is no dispute as to the valuation. The sole question is whether the personal property is exempt from taxation as being property used exclusively for religious purposes under Article X of the Missouri Constitution. The appellant had previously appealed the assessment to the Board of Equalization of the City of St. Louis, which upheld the action of the Assessor. The appellant claims exemption on the ground that the property is used solely and exclusively for religious and charitable purposes.

After due notice to all interested parties, a hearing in this matter was held in the Assessor's office of the City of St. Louis, City Hall, Room 120, St. Louis, Missouri on October 8, 1974. Missouri Church of Scientology was represented by Alan C.

Kohn and William E. Albrecht, Attorneys at Law, St. Louis, Missouri. The City of St. Louis and its Assessor Glenn J. McBrady were represented by James J. Wilson. Members of the State Tax Commission in attendance were the Honorable James E. Riney, Chairman, and Carl E. Davis and Don G. Williams, Members.

Findings of Fact

1. The Missouri Church of Scientology was organized in 1969 and is a not-for-profit corporation. The earliest incorporation of the Church of Scientology elsewhere in the United States was in 1954.

2. The property in question was used in its headquarters at 4221 Lindell on January 1, 1974.

3. There are ceremonies or services conducted on Sunday afternoons at the headquarters. These are the only regular services (Tr.14).

4. These services are presided over by ministers.

5. The founder of the Church is L. Ron Hubbard who is still living.

6. There is literature which is disseminated which encourages other persons to join and there are other efforts made to achieve the same purpose.

7. The Missouri Church of Scientology also engages in public affairs such as conducting a drug counseling program.

8. The property in question consisting of office equipment and furniture is used in the promotion of the organization including keeping its records, providing mailings to the membership.

9. The Church of Scientology does not have formal seminaries but requires that prospective ministers go through counseling courses which are conducted in their headquarters buildings.

10. There is no formal membership roll for the Church of Scientology.

11. The Church of Scientology is an applied religious philosophy having as its members persons who belong to other formal religions such as members of the Catholic and Lutheran churches and including Catholic priests and Jewish rabbis (Tr. 23). Membership in other religious faiths does not preclude membership in the Church of Scientology.

12. There was no corroborative evidence from any independent witness presented to the effect that the Missouri Church of Scientology is recognized by any other religious faiths as being a bona fide religion.

13. We find the testimony of the Reverend Frederick M. Rock generally not to be credible and worthy of belief in particular in respect to his description and categorization of the activities of the organization, its alleged religious services, its financial structure and the nature of the so-called donations which are made to the organization.

14. The Commission finds that there is no sufficient credible evidence presented by the appellant to satisfy the burden placed upon one claiming exemption from taxation.

Conclusions of Law

The sole question presented is whether property in question is used exclusively for religious purposes. This involves a determination of whether the Missouri Church of Scientology is a bona fide religion and has so been established in the record

made before the Commission. The following Conclusions of Law are herewith made.

1. Under Article X, Section 6 of the Missouri Constitution and Section 137.100 R.S.Mo. all property used exclusively for religious worship is exempt from taxation.

2. This Commission has jurisdiction of this proceeding and the parties hereto, and is the sole judge of the credibility of the witnesses appearing before it.

3. It is the function of the Commission to determine the credibility of witnesses and to judge what probative weight or value to give to their testimony.

4. As to claims for exemption from taxation the burden is on the owner claiming his property to be exempt to establish that his property falls within the exempted class. *National Cemetery Ass'n. of Missouri v. Benson*, 129 S.W.2d 842 (Mo. 1939).

5. Exhibits which were marked and identified but which were never offered into evidence cannot be considered as such by this Commission in its capacity as the trier of fact.

6. Claims for exemption from taxation are not favored in the law and provisions for exemption are strictly construed against one who claims to be exempt.

7. It is concluded that with the lack of credibility found by this Commission in the testimony of the witness Rock and the lack of corroboration by any independent authority on contemporary religions that the property owner has not satisfied the burden placed upon him.

8. While the appellant has some of the trappings and accoutrements of an organized religion, it appears to be more an applied philosophy which has a certain religious connotation, but which falls short of being devoted to the worship of the Supreme Being,

which this Commission concludes is necessary for the property owner to have its property considered exclusively for religious worship. The Commission does not believe that an applied religious philosophy is identical for purposes of exemption with an organized religion devoted to religious worship.

9. The personal property of the appellant has not, therefore, been shown to be used exclusively for religious worship or charitable purposes and therefore cannot be exempted from ad valorem taxation.

10. The decision of the Board of Equalization placing an assessment of \$5,000.00 upon the personal property of the Missouri Church of Scientology for the year 1974 is herewith affirmed.

It is so ordered.

STATE TAX COMMISSION OF MISSOURI

/s/ JAMES E. RINEY
JAMES E. RINEY, Chairman

/s/ DON G. WILLIAMS
DON G. WILLIAMS

/s/ ROBERT LOVE
ROBERT LOVE

APPENDIX D

Clerk of the Supreme Court
State of Missouri
Jefferson City, Missouri
65101

Thomas F. Simon
Clerk

Telephone
(314) 751-4144
—
P. O. Box 150

February 8, 1978

Mr. Thomas J. Frawley
Mr. Alan C. Kohn
411 North 7th Street, Ste. 1215
St. Louis, Missouri 63101

In re: Missouri Church of Scientology vs. State Tax
Commission, et al.—No. 59551

Dear Messrs. Frawley and Kohn:

This is to advise that the Court this day has made the following order in the above-entitled cause:

"Plaintiff-appellant's motion for rehearing overruled."

Yours very truly,

/s/ Thomas (Illegible)
Clerk

cc: Mr. James J. Wilson

APPENDIX E

In the
Supreme Court of Missouri
en banc

Missouri Church of Scientology,
Plaintiff-Appellant,
vs.

State Tax Commission of Missouri,
J. E. Riney, Don G. Williams,
Robert F. Love, Commissioners of
State Tax Commission of Missouri,
John K. Travers, Collector of
Revenue, City of St. Louis, and
Glenn J. McBrady, Assessor, City
of St. Louis,
Defendants-Respondents.

No. 59551

**Notice of Appeal to the Supreme
Court of the United States**

Notice is hereby given that the Missouri Church of Scientology, Plaintiff-Appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of February 8, 1978, of the Supreme Court of Missouri, affirming the judgment of the Circuit Court of the City of St. Louis.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

KOHN, SHANDS, ELBERT, GIANOULAKIS
& GILJUM

/s/ ALAN C. KOHN
/s/ THOMAS J. FRAWLEY
411 North Seventh Street
St. Louis, Missouri 63101
(314) 241-3963
Counsel for Appellant

Certificate of Service

I hereby certify that on the 12th day of April, 1978, I deposited this Notice in a United States mailbox, first class postage prepaid, addressed to Mr. James J. Wilson, Associate City Counselor, 314 City Hall, St. Louis, Missouri 63103, counsel of record for defendants-respondents. I further certify that all parties required to be served have been served.

/s/ Alan C. Kohn

Clerk of the Supreme Court
State of Missouri
Jefferson City, Missouri
65101

Thomas F. Simon
Clerk

Telephone
(314) 751-4144

April 14, 1978

Mr. Alan C. Kohn
411 North Seventh Street
St. Louis, Missouri 63101

In re: Missouri Church of Scientology vs. State Tax
Commission of Missouri, et al. No. 59551

Dear Mr. Kohn:

This is to acknowledge receipt of appellant's Notice of Appeal to the Supreme Court of the United States which has this day been filed in the above-entitled cause with service shown.

Yours very truly,

THOMAS F. SIMON

/s/ MARY ELIZABETH McHANEY
Deputy Clerk, Court en Banc

APPENDIX F

The Missouri Constitution, Article X, § 6, provides in full as follows:

All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void.

Section 137.100, Revised Statutes of Missouri, 1969, provides in full as follows:

The following subjects are exempt from taxation for state, county or local purposes:

- (1) Lands and other property belonging to this state;
- (2) Lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments, and on public squares and lots kept open for health, use or ornament;
- (3) Nonprofit cemeteries;
- (4) The real estate and tangible personal property which is used exclusively for agricultural or horticultural societies organized in this state;
- (5) All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held

for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes;

(6) Household goods, furniture, wearing apparel and articles of personal use and adornment, as defined by the state tax commission, owned and used by a person in his home or dwelling place.

JUL 19 1978

MICHAEL R. G. A. JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1568

MISSOURI CHURCH OF SCIENTOLOGY,

Appellant,

vs.

STATE TAX COMMISSION OF MISSOURI, J. E. RINEY,
DON G. WILLIAMS, ROBERT F. LOVE, Commissioners
of the State Tax Commission of Missouri, JOHN K.
TRAVERS, Collector of Revenue, City of St. Louis, and
GLENN J. McBRADY, Assessor, City of St. Louis,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

MOTION TO DISMISS OR AFFIRM

JOHN ASHCROFT

Attorney General

NEIL MACFARLANE

Assistant Attorney General

Supreme Court Building

Jefferson City, Missouri 65102

314 751 3321

Attorneys for Appellees

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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1568

MISSOURI CHURCH OF SCIENTOLOGY,
Appellant,

vs.

STATE TAX COMMISSION OF MISSOURI, J. E. RINEY,
DON G. WILLIAMS, ROBERT F. LOVE, Commissioners
of the State Tax Commission of Missouri, JOHN K.
TRAVERS, Collector of Revenue, City of St. Louis, and
GLENN J. McBRADY, Assessor, City of St. Louis,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16(1)(b) and (d) of the Rules of the Supreme Court of the United States, Appellees move this court to dismiss the appeal herein or, in the alternative, to summarily affirm the decision below, for the reasons and on the grounds hereinafter set forth.

STATEMENT

This case is an appeal from a decision of the Supreme Court of Missouri, en banc, dated December 19, 1977, which denied Appellant's request for a tax exemption for certain tangible personal property it controlled on January 1, 1974. The decision in question is reported at *Missouri Church of Scientology v. State Tax Commission*, 560 S.W. 2d 837 (Mo. banc 1977).

For the tax year 1974, the Assessor for the City of St. Louis placed certain office equipment and furniture on the assessment rolls, assigning them an assessed value of \$5,000. Appellant contested this action on the grounds that the property was "actually and regularly used exclusively for religious worship" within the meaning of §137.100(5), RSMo Supp. 1975, V.A.M.S., and Article X, §6 of the Constitution of Missouri. Appellant pursued its administrative remedies and was granted a hearing by Appellee State Tax Commission of Missouri on October 8, 1974.

At that hearing, the sole witness testifying for Appellant with respect to the claimed religious exemption was Reverend Frederick M. Rock, a 26 year old minister with Appellant's organization. He testified as to the general practices, tenets and nature of the organization and opined that the items of personal property in question were used in the administration of the church. He described the Church of Scientology in terms of an applied religious philosophy which emphasized the individual and the spiritual nature of man. It was made clear during the hearing that membership in a recognized religion, such as the Catholic Church, does not preclude membership in the Church of Scientology. Twenty-two exhibits apparently

relating to the taxable status of Appellant as a religious organization were marked for identification but never offered into evidence. No other proof as to the purported religious nature of Appellant's organization was either offered or accepted into evidence by the Commission.

The Commission denied the exemption claimed by Appellant on essentially the following grounds included in its Findings of Facts and Conclusions of Law:

Findings of Fact

"13. We find the testimony of the Reverend Frederick M. Rock generally not to be credible and worthy of belief in particular in respect to his description and categorization of the activities of the organization, its alleged religious services, its financial structure and the nature of the so-called donations which are made to the organization.

"14. The Commission finds that there is no sufficient credible evidence presented by the appellant to satisfy the burden placed upon one claiming exemption from taxation.

Conclusions of Law

"4. As to claims for exemption from taxation the burden is on the owner claiming his property to be exempt to establish that his property falls within the exempted class. *National Cemetery Ass'n of Missouri v. Benson*, 344 Mo. 784, 129 S.W.2d 842 (1939).

"5. Exhibits which were marked and identified but which were never offered into evidence cannot be considered as such by this Commission in its capacity as trier of fact.

"7. It is concluded that with the lack of credibility found by this Commission in the testimony of the witness Rock and the lack of corroboration by any independent authority on contemporary religions that the property owner has not satisfied the burden placed upon him.

"9. The personal property of the appellant has not, therefore, been shown to be used exclusively for religious worship or charitable purposes and therefore cannot be exempted from ad valorem taxation." *Mo. Church of Scientology v. State Tax Commission, supra*, at 844-845.

Appellant petitioned the Circuit Court of St. Louis City to review the above decision of the Commission. The Circuit Court affirmed the Commission's decision on the ground that Appellant had failed to carry its burden of proving that the property was used *exclusively* for religious purposes. An appeal was taken to the Supreme Court of Missouri.

In the resulting *Scientology* opinion, cited above, the Missouri Supreme Court, in affirming the judgment of the Circuit Court, stated:

"Weighing the evidence in light of appellant's sole witness' want of credibility and against the substantial burden of proof required, we find the record supports the Commission findings." *Scientology, supra*, at 844.

This appeal followed.

ARGUMENT

I.

This Court should dismiss the instant appeal or summarily affirm the decision below because the decision of the Missouri Supreme Court rests on an adequate non-federal basis.

It is a well established principle that the United States Supreme Court will decline to review state court judgments which rest on independent and adequate state grounds, whether those grounds be procedural or substantive in character. *Henry v. State of Mississippi*, 379 U.S. 443, 446, 85 S.Ct. 564, 13 L.Ed.2d 408 (1965); *Fay v. Noia*, 372 U.S. 391, 428, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963) and cases cited therein. Further, it is clear that the question of whether a party has produced sufficient evidence to make a case under state law is a non-federal matter. *American Radio Association v. Mobile Steamship Association, Inc.*, 419 U.S. 215, 231, 95 S.Ct. 409, 42 L.Ed.2d 399 (1974).

An examination of the decision of the Missouri Supreme Court in *Scientology, supra*, reveals that the decision is grounded on a non-federal basis, namely, the fact that the record in the case supported the Tax Commission's finding that Appellant had failed to carry the heavy burden of showing its entitlement to the tax exemption.

Article X, §6 of the Constitution of Missouri provides as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or cor-

porate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. . . . All laws exempting from taxation property other than the property enumerated in this article shall be void." (Emphasis supplied).

Based upon this constitutional provision the legislature did exempt all such property by enacting §137.100(5), RSMo Supp. 1975, which reads as follows:

"All property, real and personal, actually and regularly used exclusively for religious worship, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals therefrom is used wholly for religious, educational or charitable purposes." (Emphasis supplied).

It is axiomatic under both state and federal law that claims for tax exemption are not favored. Accordingly, the burden has been placed upon the owner of the property to establish that his property falls within the exempted class. *City of St. Louis v. State Tax Commission*, 524 S.W.2d 839, 844 (Mo. 1974), citing *National Cemetery Association v. Benson*, 344 Mo. 784, 129 S.W.2d 842, 845 (1939). This is consistent with the general rule that there is a presumption recognized against exemption from taxation. 84 C.J.S., Taxation, §225, pp. 431-434 (1954).

A close reading of the *Scientology* decision indicates convincingly that the Court's decision rests on the failure of Appellant to present sufficient credible evidence to

justify the granting of the exemption. After recognizing the Commission's undoubted authority to judge the credibility of the witnesses before it, the Court went on to find that nothing in the record justified overturning the Commission finding that Rev. Rock's testimony was not credible. *Scientology, supra*, at 843-844. As previously noted, there was no evidence in the record which would have served to establish the religious character of Appellant's organization, save this discredited testimony. Documentary materials purporting to establish same were never introduced into evidence. *Scientology, supra*, at 839. In such circumstances, it was proper for the Court to conclude:

"Weighing the evidence in light of the appellant's sole witness' want of credibility and against the substantial burden of proof required, we find the record supports the Commission findings." *Scientology, supra*, at 844.

Contrary to Appellant's interpretation of the concurring opinion in *Scientology*, it is apparent that Judge Seiler, like the majority, recognized that the Appellant's failure of proof, standing alone, supported the denial of the exemption:

"As I understand the situation, the only evidence offered by appellant before the Commission was a witness whom the Commission found not credible with respect to his testimony bearing on the issues. We are not going to disturb that finding. *Beyond question, then, appellant has not carried the burden of establishing an exemption from taxation*" *Scientology, supra*, at 845. (Emphasis supplied).

This analysis demonstrates that there was a completely independent and adequate non-constitutional basis for the

decision in question. The Court's pronouncement that the term "religious worship" contained in Article X, §6 and §137.100(5) minimally required a belief in a Supreme Being need not be reviewed because the decision did not turn on this point. In fact, Appellant argued to the court below that Scientology "acknowledges the existence of God and recognizes and espouses devotion to a Supreme Being." *Scientology, supra*, at 843. This indicates as a practical matter that the crux of the decision relates to the burden of proof generally rather than to the definitional standard to which that burden is directed. Furthermore, even if the decision had not discussed the nature of "religious worship" the result in the case would have been the same. There was simply no credible evidence presented as to the religious nature of Appellant. Inasmuch as the decision rests on an adequate state ground, this appeal should be dismissed for want of jurisdiction.

On a related point, Appellees contend that this appeal should be denied plenary consideration because, in light of the extreme deficiencies in the evidence presented to the Commission by Appellant, the record in this case fails to disclose the necessary facts for review. *Hughes v. Wendel County Treasurer*, 317 U.S. 134, 63 S.Ct. 432, 87 L.Ed. 139 (1942). In absence of Rev. Rock's testimony, which the Commission had full authority under state law to find noncredible [*Koplar v. State Tax Commission*, 321 S.W.2d 686, 694 (Mo. 1959)], there is a complete lack of evidence to afford a basis for determining the religious nature, *vel non*, of Appellant's organization.

In sum, it may be seen that Appellant's allegation that the *Scientology* decision rests on a finding that devotion to a Supreme Being is a prerequisite to a property tax exemption is unfounded. Even assuming for the sake of argument that the decision is ambiguous, a dismissal would still

be in order. See, *Simmons v. West Haven Housing Authority*, 399 U.S. 510, 511, 90 S.Ct. 1960, 26 L.Ed.2d 764 (1970); *Black v. Cutter Laboratories*, 351 U.S. 292, 299, 76 S.Ct. 824, 100 L.Ed. 1188 (1956). In such circumstances, this appeal should be dismissed.

II.

This Court should dismiss the instant appeal or summarily affirm the decision below because the appeal fails to present a substantial federal question.

Plenary consideration of this appeal is unnecessary because the question presented is insubstantial. Appellant contends that the ruling below "violates the First Amendment because it not only establishes religions which believe in the worship of God, but it also prohibits the free exercise of those which do not." (Jurisdictional Statement, p. 8). The Supreme Court of Missouri in *Scientology* recognized the weakness of Appellant's First Amendment claims:

"Appellant contends that requiring devotion to worship of the Supreme Being as a sine qua non to classification as religion and entitlement to exemption from ad valorem taxation would be in direct contravention of the First Amendment citing *United States v. Seegar*, 380 U.S. 163 . . . *Torcaso v. Watkins*, 367 U.S. 488 . . . and *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1. . . . Appellant gives little explanation how these cases support its position and the cases do not justify the contention made. *Seegar* . . . involves an interpretation of the Selective Service Act, with its main thrust defining the statutory terms religious belief and Supreme Being. *Torcaso* does not define religion, holding only that a state may not require an oath declaring a belief in God as a prerequi-

site for holding public office but indicated nothing that would limit a legislative grant of tax exempt status to religious organizations. *Everson* dealt with the constitutionality of states (Maryland) providing bus service to parochial school students. It did not suggest principles pertinent to the issues here." *Scientology*, *supra*, 842-843, fn. 5.

Presented with such scant authority, the Missouri Supreme Court was clearly correct in denying Appellant's First Amendment contentions. The same result should obtain here.

Appellees submit that the definition of "religious worship" contained in the *Scientology* opinion is strictly based upon an interpretation of the Missouri Constitution and a statute enacted pursuant thereto, and that Appellant has in no substantial way shown how such interpretation is in contravention of the First Amendment. Therefore, this appeal should be dismissed for lack of a substantial federal question.

CONCLUSION

For the foregoing reasons, Appellees move that this appeal be dismissed or, in the alternative, the decision below summarily affirmed.

Respectfully submitted,

JOHN ASHCROFT
Attorney General

NEIL MACFARLANE
Assistant Attorney General
Supreme Court Building
Jefferson City, Missouri 65102
314/751/3321

Attorneys for Appellees

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 77-1508

MISSOURI CHURCH OF SCIENTOLOGY,
Appellant.

STATE TAX COMMISSION OF MISSOURI, J. E. RINEY, DON G. WILLIAMS,
ROBERT F. LOVE, Commissioners of the State Tax Commission of Mis-
souri, JOHN M. TRAVERS, Collector of Revenue, City of St. Louis, and
GLENN J. McBRADY, Assessor, City of St. Louis,
Appellees.

On Appeal from the Supreme Court of Missouri

APPELLANT'S REPLY BRIEF

In Opposition to Appellees' Motion to Dismiss or Affirm

JOHN SHANDS ELBERT, GIANOUAKIS
& GILUM

ALAN C. KOHN

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1568

MISSOURI CHURCH OF SCIENTOLOGY,
Appellant,

v.

STATE TAX COMMISSION OF MISSOURI, J. E. RINEY, DON G. WILLIAMS,
ROBERT F. LOVE, Commissioners of the State Tax Commission of Mis-
souri, JOHN K. TRAVERS, Collector of Revenue, City of St. Louis, and
GLENN J. McBRADY, Assessor, City of St. Louis,
Appellees.

On Appeal from the Supreme Court of Missouri

APPELLANT'S REPLY BRIEF
In Opposition to Appellees' Motion to Dismiss or Affirm

**The Decision Below Presents a Substantial Federal Question
and Does Not Rest on an Adequate Non-Federal Basis**

Appellees argue that this Court should dismiss this appeal
or affirm the judgment below because (1) the appeal fails to
present a substantial federal question, and (2) the decision below

is based on an adequate non-federal basis. With regard to whether a substantial federal question is presented, appellant rests on its jurisdictional statement which, it believes, amply demonstrates the seriousness of the constitutional question here presented.

Appellees' argument that the decision below rests on an adequate non-federal basis is totally misplaced. The Supreme Court of Missouri held that state law requires proof of a belief in "the Supreme Being" in order for a religion to obtain tax exempt status (Jurisdictional Statement, pp. A-4-A-9), and that Appellant's proof on this point failed (Jurisdictional Statement, pp. A-10-A-12). Appellees argue that failure of proof is a state question and that therefore the decision below adequately rests on this non-federal point.

This argument is fallacious because it misses the whole federal point: It is unconstitutional for a state to require proof of belief in God in order for a religion to obtain tax-exempt status. *Torcaso v. Watkins*, 367 U.S. 488 (1961), and see Appellant's Jurisdictional Statement at pp. 8-10. Whether appellant produced satisfactory evidence (or any evidence for that matter) on the question of its belief in God is irrelevant because Missouri cannot impose a requirement that Appellant produce any such evidence without running afoul of the First Amendment. Hence, the issue of failure of proof in the circumstances of this case is neither a non-federal ground nor is it an adequate non-federal ground.

Moreover, the requirement of a belief in God and the Church's failure to produce satisfactory evidence on that requirement are inextricably intertwined. Even if one assumes the question of proof is a non-federal question, it is not independent of the federal question. "[W]here the non-Federal ground is so interwoven with the other as not to be an independent matter, . . . our jurisdiction is plain." *Enterprise Irrigation Dist. v. Farmers Mu-*

tual Canal Co., 243 U.S. 157, 164 (1917); cf. *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 290 (1958).

Appellees argue that the Church failed to prove compliance with the Missouri statute on tax exemption in all its particulars and not just in its unconstitutional particular. But an examination of the opinion below plainly shows that this is not so. The Supreme Court of Missouri held that the Church failed to meet its burden only on the constitutional requirement of a belief in God. Neither the Court nor the State Tax Commission found, for example, that the Church failed to prove that its property was used "exclusively" for religious purposes, or that its property was used for "worship," or that its property was not used for "profit." In fact, the Supreme Court rejected the trial court opinion that the Church had not met its burden on the exclusivity issue. Instead, the Supreme Court held that the Church failed only in its proof of a belief in God.

Moreover, the only testimony by anyone in this case was that of Reverend Rock and his testimony was therefore the only basis upon which the Commission could make 14 Findings of Fact and 10 Conclusions of Law. Hence Reverend Rock's testimony was not rejected in toto. In fact, except for his unequivocal testimony that the Church believes in God, his entire testimony was accepted as fact. It was indeed based on his factual testimony that the Court and the Commission reached the erroneous and unconstitutional conclusion that the Church "appears to be more an applied philosophy which has certain religious connotations, but which falls short of being devoted to the worship of the Supreme Being." (Jurisdictional Statement at page A-32).

Judge Seiler, in his concurring opinion, points out that the Commission found not credible Reverend Rock's testimony "bearing on *the issue*." The only "issue" decided by the Supreme Court or the State Tax Commission was whether the Church believed in God. Moreover, Judge Seiler criticized the opinion

of the Court for deciding that issue by "restrict[ing] the definition [of religion] to conventional orthodox religions" since in the main only such religions require a belief in the Supreme Being. (Jurisdictional Statement at page A-17). It is respectfully submitted that there can be little doubt that the decision below, fairly read, rests solely on the Church's failure to prove its belief in God and that such a basis is neither adequate nor non-federal.

Thus, the Supreme Court of Missouri decided the case on a federal basis, and even if there had been arguably a non-federal ground upon which the Court could have rendered its decision, such as failure to prove exclusive use for religious purposes, still such a possibility would not preclude review here. This Court has held that it will review a case even though the state court, consistently with the record, might have based its decision on an adequate state ground. *Steele v. Louisville Nashville R. Co.*, 323 U.S. 192, 197, note 1 (1944); *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 98 (1938); *International Steel & Iron Co. v. National Surety Co.*, 297 U.S. 657, 666 (1936); *Grayson v. Harris*, 267 U.S. 352, 358 (1925).

Finally, Supreme Court review cannot be avoided by a non-federal ground which is unfounded and arbitrary. It is worth noting that the Commission opinion, which was affirmed by the Missouri Supreme Court, was written over a year after the Commission rendered its decision and almost a year after the Church appealed the Commission decision to the Circuit Court of the City of St. Louis. The Commission opinion on the question of the credibility of Reverend Rock is therefore suspect as "a mere device to prevent a review of the decision upon the federal question." *Enterprise Irrigation Dist. v. Farmers Mutual Canal Co.*, 243 U.S. 157, 164 (1917). In such an instance, review is appropriate.

For all of the reasons stated in Appellant's Jurisdictional Statement and in this brief, it is respectfully submitted that a

substantial federal question is presented, that the question was erroneously decided by the Court below, that the decision below does not rest on an adequate non-federal basis, and that therefore this Court should note probable jurisdiction.

Respectfully submitted,

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